IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 1422 of 2005

Between:

1. S.V. Satyanarayana Reddy, S/o. Veera Reddy,
State Audit, Municipal Shopping Complex, Rajahmundry, R/o.

D.No.59-11-11-/1 par Colony, Rajahmundry, East Godavari District.
2. S. Naga Raju, S/o. Satyanarayana Murthy,
% District audit Officer, Rajupeta, Machilipatna, R/o. D.No.

23-12-6, Satyanarayanapuram, Vijayawada, Krishna District.
3. J.J. Subrahmanyam, S/o. Swamy Dasu, % District Audit Officer,

Rajupeta, Machilipatnam, R/o. D.No.15/419-1, Edepalli,
Machilipatnam, Krishna District.
4 S. Dharma Raju, S/o. S. Veer Raju, % District audit Officer,

Kakinada, R/o. D.No. 2-194, Madhuranagar, Kakinada,
East Godavari District.
5 Smt. M.V. Ramana, W/o. A.S.V. Sarma,
% C.M. Relief Fund, Revenue Department, Secretariat,

Hyderabad, R/o. Plot No.33, Opp. LIGH 22,1st Phase HB Colony,

Moulali, Hyd.
6. Smt. M.M. Surya Kumari, D/o. Veerabhadra Rao,
% District audit Officer, Kakinada, R/o.Palvari Veedhi, Kakinada,

East Godavari District.

..... PETITIONERS

AND

1 The Regional Deputy Director, Local Fund, Audit (Zone-II),

Eluru, West Godavari District.
2 The Director, Local Fund Audit, A.P., Hyderabad.
3 The Government of A.P., rep. by its Principal

Secretary/Secretary, Finance & Planning Dept (Finance wing),

Secretariat, Hyderabad.
4 P. Moshe, State Audit, Kakinada, E.G.District.
5 Ch. Naraiah, Directorate of State Audit, A.P., Hyderabad.
6 L. Peeroji, State Audit, Gannavaram, Krishna District.
7 N. Kumar Babu, State Audit, regional Centre MCR HRD,

Western Street, Eluru, W.G.District.
8 Smt. G. M. Vijaya Susheela, State Audit, (MP), Machilipatnam,

Rajupeta, Krishna Dist.
9 Smt. G. M. Vijaya Susheela, State Audit, Nampalli, Hyderabad.
10 Y. Prasada Rao, State Audit, A.P., Hyderabad.
11 Y. Satyanarayana, State Audit, Tadepalligudem, W.G.District,
12 P. Sitrama Rao, State audit Municipal shopping Complex, Cheruvu, Rajahmundry, E.G.District.
13 P. Chandrasekhar, Senior Auditor, % Asst. Audit Officer, State Audit, Eluru, W.G.District.
14 M. Satya Dhananjaya, Senior Auditor, %Dist. Audit Officer,

State Audit, Eluru, W.G.district.
15 P. Govinda Swamy, Senior Auditor, %Asst. Audit Officer, State

Audit, Kakinada, E.G.Dist.
16 Kum. K. Naga Mani, Senior Auditor, % The District Audit Officer,

State Audit, Kakinada E.G.Dist

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ order or direction particularly one in the nature of writ of certiorari after calling for records pertaining to the order in OA.No.411/1993 dt. 06th January, 2005 on the file of the HOn'ble A.P. Administrative Tribunal, Hyderabad and quash the same as illegal, arbitrary and contrary to the rules apart from being violative of Articles 14 and 16 of the Constitution of India and pass suchother order or orders.

Counsel for the Petitioner:MR.M.PANDURANGA RAO

Counsel for the Respondents 1 to 3: GP FOR FINANCE & PLANNING

Counsel for the Respondents 4 to 16 : Mr. J.R.Mahonar Rao

The Court made the following :

O R D E R: (Per the Hon'ble Sri Justice G.Bikshapathy)

The writ petition is filed under Article 226 of the Constitution of India, seeking declaration that the order dated
06-01-2005 made in O.A.No.411 of 1998 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') as illegal and arbitrary.

2. The petitioners herein are the promotees having been appointed as Junior Auditors initially and subsequently they were promoted to Senior Auditors. There is

a direct recruitment channel at the stage of Senior Auditors. The official respondents are direct recruitees to the post of Senior Auditors. The dispute arose with regard to the fixation of seniority *inter se* among the direct recruitees and promotees. It is also on record that when the petitioners were promoted as Senior Auditors and consequent on the appointment of the official respondents they were reverted back to the post of Junior Auditors and subsequently they were again promoted to the post of Senior Auditors when they are entitled to seniority and were sought to be shown as seniors which was challenged by the unofficial respondents in the said O.A., which was disposed of by the Tribunal.

3. It is the contention of the direct recruitees that the petitioners were promoted in excess of their quota under the Rules and therefore, they should be ranked below them and therefore, they cannot be made seniors to them.

4. The contention raised by the petitioners-unofficial respondents is that they were considered with reference to Rule 6 of A.P. State and Subordinate Services Rules, 1962 more particularly, with reference to the explanation to Rule –6. The Tribunal, after considering the matter observed as follows:

> …. In view of the explanation to Rule 6 direct recruitment could be made not only against the vacancies in permanent cadre but also against all vacancies in the post which have been in existence for more than 10years, all vacancies in 75% posts which have been in existence for more than 3 years but less than 10years and all vacancies in 50% of the posts which have been in existence for more than a year but less than 3 years. Therefore, the calculations made by the authorities taking into consideration the vacancies that have arisen not only in permanent cadre but also substantive vacancies in posts which have been in existence for more than one year/3 years/10 years, etc., cannot be said to be contrary to the rules. Therefore, the estimate of 24 vacancies for direct recruitment cannot be faulted. Consequently, respondents 20 to 30 are to be treated as having been promoted in the vacancies meant for direct recruits. When they occupy the vacancies meant for direct recruits they are not entitled for seniority for the date of their initial appointment for the reasons already stated. Therefore, the impugned seniority list as far as it relates to showing Respondents 20 to 30 as seniors to the applicants cannot be sustained. The impugned seniority list showing the respondents 20 to 30 as seniors to the applicants is set aside with a direction that they should be placed below the applicants in the seniority list. Any promotions to the category of Assistant Audit Officers should be based on the seniority list to be revised based on the above directions. The O.As., are accordingly disposed of with the above directions.

Against the said order, the petitioners who are the respondents before the Tribunal has filed the present writ petition.

5. The learned counsel appearing for the petitioners submits that the order of the Tribunal is not sustainable in as much as the petitioners were initially promoted as Senior Assistants, Auditors and subsequently even though they were reverted, again they were promoted and their services were regularized with an anterior-date and therefore, they should be treated as seniors to the unofficial respondents herein. The learned counsel would also submit that the calculation as made by the Government was not proper and Rule 6 has not been considered in that regard. What was mentioned in Rule 6 is a substantive vacancy in the permanent cadre that is available and no direct recruitment can be restored to. Therefore the calculation ought to have been made only on the said basis but they have taken the other vacancies also in that regard with the result, prejudice is caused to the inservice candidates.

6. We are afraid we cannot accept the said contention. The Tribunal had considered the effect of Rule-6 and also the explanation annexed thereto and found that the substantive vacancies that have arisen not only in permanent cadre but also vacancies which have been in existence for more than one year/3 years/10 years etc., with reference to the respective percentage have to be taken into consideration. The said finding cannot be said to be contrary to the Rules.

7. Under those circumstances, the tribunal found that some of the candidates were promoted in excess of the quota reserved for the inservice candidates and therefore, they have to give a way to the direct recruits for placing them below the direct recruits. Thus we do not find any flaw in the impugned order.

8. Accordingly, the writ petition is dismissed. No costs.

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G. BIKSHAPATHY, J

02-02-2005

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P.S.NARAYANA, J

Mjl/*

To

1 The Regional Deputy Director, Local Fund, Audit (Zone-II),

Eluru, West Godavari District.
2 The Director, Local Fund Audit, A.P., Hyderabad.
3 The Principal Secretary/Secretary, Finance & Planning Dept (Finance wing), Government of Andhra Pradesh,

Secretariat, Hyderabad.
4. 2 CCs to the Govt. Pleader for Finance & Planning, High

Court Buildings, Hyderabad.

5. 2 CD copies.